Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

HAROLD McENROE and
NOLA GRANNIS, *Petitioners,*

v.

LUIS RAMIREZ, *Respondent.*

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Heck v. Humphrey*, this Court established the "favorable-termination rule," precluding a case that falls jointly under the habeas-corpus statute, 28 U.S.C. § 2254, and the Civil Rights Act, 42 U.S.C. § 1983, from being filed as a civil-rights suit unless the contested state action was "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. 477, 486–87 (1994).

This case presents the following question:

When an inmate challenges a disciplinary finding that results in punitive segregation but not a change in the length of his prison sentence, is habeas-corpus jurisdiction available and, thus, the favorable-termination bar applicable?

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IN THE SUPREME COURT OF THE UNITED STATES

No.

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v.

LUIS RAMIREZ, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI

Petitioners Harold McEnroe, a lieutenant for the California Department of Corrections, and Nola Grannis, in her official capacity as the Department's Chief of the Inmate Appeals Branch, pray that this Court grant a writ of certiorari to review the June 27, 2003 judgment by the Court of Appeals for the Ninth Circuit in this case.

The Ninth Circuit's decision held that a prisoner cannot assert habeas-corpus jurisdiction under 28 U.S.C. § 2254 unless the relief he seeks would necessarily accelerate his release from prison. Further, it ruled that when an inmate files a civil-rights suit under 42 U.S.C. § 1983 alleging an unconstitutional prison disciplinary conviction, he need not show that the disciplinary conviction was previously invalidated unless it affects the length of his prison sentence.

OPINION BELOW

The Court of Appeals' opinion (App., *infra*, 1a–20a) is reported at *Ramirez v. Galaza*, 334 F.3d 850 (9th Cir. 2003). The Magistrate Judge's findings and recommendations for dismissal (App., *infra*, 21a–27a) and the District Court's dismissal order (App., *infra*, 28a–29a) are unreported.

JURISDICTION

The Court of Appeals entered judgment on June 27, 2003, and it denied a timely petition for rehearing en banc on September 8, 2003 (App., *infra*, 32a–33a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant portions of 28 U.S.C. § 2254 provide:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> (b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
>
> (A) the applicant has exhausted the remedies available in the courts of the State; or
>
> (B)(i) there is an absence of available State

corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

The relevant portion of 42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

STATEMENT OF THE CASE

Luis Ramirez—a prisoner at California State Prison, Corcoran—filed this civil-rights suit alleging that various prison officials violated his due-process rights by finding him guilty of severely battering his cellmate. In particular, Mr. Ramirez alleges that the hearing officer was biased against him and prevented him from calling witnesses or cross-examining adverse witnesses. He further alleges that other officials affirmed the disciplinary conviction because of bias against him.

Mr. Ramirez also challenges his resulting punishment, which included a two-year sentence to the security-housing unit, ten days of disciplinary detention, and sixty days of lost privileges. (App., *infra*, 3a.) Mr. Ramirez lost no sentence credits because the disciplinary hearing was not held soon enough under departmental guidelines. His suit seeks damages,

declaratory relief, and an injunction requiring—among other things—an immediate return to the general population and expungement of his disciplinary charges and conviction. (App., *infra*, 3a; C.A. Excerpt R.14.)

The Magistrate Judge recommended dismissal of the complaint because Mr. Ramirez did not show that his disciplinary conviction had been invalidated and, thus, did not comply with this Court's favorable-termination rule. (App., *infra*, 23a–24a.) Before any of the prison officials had been served, the District Court adopted the Magistrate's recommendation.

Mr. Ramirez timely appealed the District Court's dismissal. After he filed his opening brief, the Court of Appeals appointed counsel to file supplemental briefing and to argue the case for Mr. Ramirez. It also asked that the California Attorney General provide briefing and argument, either as amicus curiae or on behalf of a defendant willing to appear.

The Attorney General appeared for two defendants, who are also petitioners here. Lt. Harold McEnroe was the senior hearing officer at Mr. Ramirez's disciplinary hearing. Mr. Ramirez alleges that Lt. McEnroe was biased against him and denied him the opportunity to call or cross-examine witnesses. The Chief of the Inmate Appeals Branch, who is now Nola Grannis but at the time was Rick Manuel, made only an official-capacity appearance. Mr. Ramirez alleges that the Chief wrongly denied his administrative appeal seeking to overturn the conviction and demands an injunction requiring the Chief to do so.

The Ninth Circuit reversed the District Court's dismissal. It allowed the civil-rights action on the theory that habeas-corpus jurisdiction is unavailable to Mr. Ramirez because the relief he seeks would not necessarily accelerate his release from

prison. Based on this analysis, and noting a conflict among the Circuits, the Court of Appeals also held that a prisoner may not file a habeas-corpus petition to challenge a disciplinary conviction that resulted in segregated confinement but no sentence-credit loss. Thus, the court reasoned, Mr. Ramirez is not subject to this Court's favorable-termination rule, which would require him to invalidate his disciplinary conviction through federal-habeas-corpus or state-court proceedings before challenging the state adjudication in a civil-rights suit under 42 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

I. There is a Circuit Conflict Whether an Inmate May Seek Habeas-Corpus Relief to Challenge a Prison Disciplinary Conviction and Confinement that Do Not Affect His Release from Prison.

The core purpose of habeas corpus is to allow a person to seek release from wrongful physical confinement, whether imposed by a court or by executive direction. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In two past opinions, *Johnson v. Avery*, 393 U.S. 483, 484 (1969), and *Wilwording v. Swenson*, 404 U.S. 249, 249–50 (1971), this Court has presumed that this focus on wrongful physical confinement extends to cases in which inmates seek less-restrictive custody.

Some Circuits, respecting this Court's presumption, recognize that a prisoner who attacks his disciplinary confinement is indeed attacking a type of custody. For example, Judge Posner, in writing for the Seventh Circuit, reasoned that habeas corpus is available to attack administrative or disciplinary segregation because it "is the normal remedy for one unlawfully confined." *McCollum v. Miller*, 695 F.2d 1044,

1046 (7th Cir. 1982). Analogizing from the fact that habeas corpus can be used to seek release on parole, which is considered a form of custody, he wrote that "habeas corpus can be used to get from a more to a less restrictive custody." *Id.* (citing *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)).

Likewise, the Fifth Circuit explicitly held that habeas corpus is the proper vehicle for an inmate to challenge administrative segregation. *Krist v. Rickets*, 504 F.2d 887, 887–88 (5th Cir. 1974). "Such release falls into the category of 'fact or duration of . . . physical imprisonment' delineated in *Preiser v. Rodriguez*," and is "reserved for habeas jurisdiction." *Id.* at 888 (quoting *Preiser*, 411 U.S. at 498–500). This rationale dovetails with the concept that a segregated housing unit is essentially a "prison within a prison that is reserved for inmates who have violated prison rules." *Robinson v. Prunty*, 249 F.3d 862, 863 (9th Cir. 2001).

But other Circuits, including the Ninth Circuit here, view this Court's presumption in *Johnson* and *Wilwording* as inconclusive. They assert that habeas corpus is unavailable to challenge conditions of prison confinement, including prison segregation. App., *infra*, 13a–15a; *DeWalt v. Carter*, 224 F.3d 607, 616–17 (7th Cir. 2000); *Jenkins v. Haubert*, 179 F.3d 19, 23 (2d Cir. 1999). The Second Circuit points in particular to *Preiser v. Rodriguez* as leaving the issue open. *Jenkins*, 179 F.3d at 23 (citing *Preiser*, 411 U.S. at 499). In *Preiser*, after citing to the factual situation in *Wilwording*, the Court stated that it is *arguable* that habeas corpus is available to challenge maximum-security confinement, but that it was unnecessary to explore the appropriate limits of habeas corpus in that case. *Preiser*, 411 U.S. at 499–500.

In sum, the Circuits require the Court's direction as to the proper scope of habeas-corpus jurisdiction. As discussed below, this question is of considerable practical importance

because habeas corpus protects federal-state comity interests through a state-court exhaustion requirement, unlike § 1983. *Id.* at 477.

II. There is a Circuit Conflict on the Important Issue Whether the Favorable-Termination Rule Applies When an Inmate Challenges a Prison Disciplinary Conviction and Confinement but Not His Prison-Release Date.

The reach of habeas-corpus jurisdiction underlies the primary issue in this case: whether an inmate who challenges his disciplinary conviction and confinement, but not his prison-release date, must show prior invalidation of the conviction before filing a § 1983 suit.

In *Preiser v. Rodriguez*, 411 U.S. at 500, this Court held that a state prisoner cannot use § 1983 to directly challenge the fact or duration of his confinement. Rather, such challenges must be brought through a writ of habeas corpus. *Id.* This rule stems from the habeas-corpus statute's state-court-exhaustion requirement, which Congress established to allow state courts to correct constitutional errors regarding both criminal convictions and prison disciplinary judgments. *Id.* Because § 1983 has no such exhaustion requirement, Congress's intent could be circumvented if prisoners were allowed to file § 1983 claims to challenge disciplinary hearings without first seeking habeas review. *Id.* at 489–92.

Twice, this Court has extended *Preiser*'s reach. First, *Heck v. Humphrey*, 512 U.S. 477 (1994), held that a prisoner cannot bring a § 1983 damages claim that, if successful, would imply the invalidity of his criminal conviction or sentence unless the conviction or sentence was previously invalidated. It must have been "reversed on direct appeal, expunged by

executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 487. As the Court explained, this rule is analogous to the favorable-termination requirement for malicious-prosecution actions. *Id.* at 484–86.

Later, *Edwards v. Balisok*, 520 U.S. 641 (1997), extended *Heck*'s invalidation requirement to § 1983 damages and declaratory claims that imply the invalidity of prison disciplinary sanctions. Just as in this case, the prisoner in *Balisok* claimed that he was denied due process because a biased hearing officer denied him potentially exculpatory witnesses and evidence. And the Court noted that a finding in the prisoner's favor would improperly require overturning the disciplinary sanctions imposed. *Id.* at 644.

The Circuits are split, however, as to whether *Balisok*—in which the inmate lost sentence credits—is controlling on cases in which the inmate's speedier release from prison is not at issue. The Sixth Circuit concentrates on *Balisok*'s concern that a state agency's judgment, including a prison disciplinary conviction, should not be attacked as a matter of first course under § 1983. *Huey v. Stine*, 230 F.3d 226, 230 (6th Cir. 2000). Indeed, *Balisok* focused on the fact "that the nature of the challenge to the procedures could be such as necessarily to imply the invalidity of the *judgment*," as opposed to the length of the criminal sentence. *Balisok*, 520 U.S. at 645 (emphasis added). And the judgment at issue in *Balisok* was the prisoner's disciplinary judgment, not a criminal judgment. But other Circuits decline to apply *Balisok*'s holding to any case that does not precisely mimic *Balisok*'s facts. App., *infra*, 9a–11a; *Torres v. Fauver*, 292 F.3d 141, 145 (3d Cir. 2002); *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000); *Jenkins v. Haubert*, 179 F.3d 19 (2d Cir. 1999); *Brown v. Plaut*, 131 F.3d 163, 168 (D.C. Cir. 1997).

Accordingly, petitioners respectfully request that this Court determine which rule is correct. If favorable-termination is proper in cases such as this, failure to apply the rule deprives states of their right to redress certain constitutional violations through their own courts, as guaranteed by the habeas-corpus statute. On the other hand, if the favorable-termination rule is improperly imposed, some prisoners are denied their right to immediate access to the courts under § 1983.

III. The Ninth Circuit Wrongly Held that Habeas-Corpus Jurisdiction Is Absent, and Thus the Favorable-Termination Rule Does Not Apply, When an Inmate Challenges a Prison Disciplinary Conviction and Confinement.

Important policy considerations require that the favorable-termination rule apply to cases in which an inmate challenges his disciplinary conviction and segregation. An attack on the legality of physical custody, "however imposed and whether or not related to conviction by a court, is the long-established function of habeas corpus." *Preiser*, 411 U.S. at 490. Congress's concern for federal-state comity, as expressed through the habeas-corpus statute's exhaustion requirement, "has as much relevance in areas of particular state administrative concern as it does where state judicial action is being attacked." *Id.* at 491. Thus, contrary to the Court of Appeals' holding, Congress did not limit § 2254's application to cases in which a prisoner's criminal conviction or sentence is at issue.

Moreover, when *Preiser* listed previous Supreme Court cases that have touched on the "core" of habeas, it included a prisoner's claim that he was unlawfully confined in the wrong institution. *Id.* at 486–87. Here, Mr. Ramirez claims that he was confined in the wrong facility, the segregated housing unit—essentially a prison within prison, *Robinson v. Prunty*,

249 F.3d 862, 863 (9th Cir. 2001). His suit alleges that his custody within the security-housing unit was unconstitutional, seeking immediate release into the general population. (C.A. Excerpt R.14.) Such claims are properly addressed under the habeas-corpus statute, which provides a vehicle for inmates to assert that they are "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254; *Preiser*, 411 U.S. at 499.

CONCLUSION

Petitioners respectfully request that the Court grant the petition for a writ of certiorari.

Dated: December 5, 2003

Respectfully submitted,

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LUIS RAMIREZ,

Plaintiff-Appellant,

v.

GEORGE M. GALAZA, Warden; JAMES GOMEZ, Director of CDC; R. MCENROE, Lieutenant; O. PENA, Chief Deputy Warden; ADRIAN CHACON, Medical Assistant; GARTH EMBREE, Physician; J. BATCHELOR, Examiner; LINDA L. MELCHING, Chief Inmate Appeals Branch,

Defendants-Appellees.

No. 00-15994

D.C. No.
CV-99-06282-REC/
DLB

OPINION

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Chief Judge, Presiding

Argued and Submitted
December 6, 2002—San Francisco, California

Filed June 27, 2003

Before: Robert E. Cowen,* Michael Daly Hawkins and William A. Fletcher, Circuit Judges.

Opinion by Judge Cowen

OPINION

COWEN, Circuit Judge:

California state prisoner Luis Ramirez brought this civil rights action under 42 U.S.C. § 1983 alleging violations of the Due Process and Equal Protection guarantees of the Fourteenth Amendment. Ramirez's complaint alleged that his constitutional rights were violated by the procedures utilized in a prison disciplinary hearing, and a subsequent administrative appeal. Ramirez also alleged that the conditions of his term of administrative segregation exceeded the normal hardships associated with incarceration. The District Court dismissed the challenge to the disciplinary procedures reasoning that *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Edwards v. Balisok*, 520 U.S. 641 (1997), required Ramirez to invalidate his disciplinary sentence before seeking damages under § 1983. The District Court also dismissed Ramirez's claims regarding his two-year term of administrative segregation as lacking a protected liberty interest.

We conclude that Ramirez may challenge the conditions of his confinement under § 1983 because his claim, if successful, would not necessarily invalidate a disciplinary action that affects the fact or length of his confinement. We further conclude that Ramirez's challenge to his term of segregated confinement is cognizable under § 1983 as a potentially atypical

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*. The Honorable Robert E. Cowen, Senior United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

and significant hardship. Finally, based on our interpretation of the favorable termination rule, we conclude that the District Court's dismissal of Ramirez's Equal Protection and supervisory liability claims was an abuse of discretion. We will therefore reverse the dismissal, and remand for further proceedings.

I. BACKGROUND

Ramirez is incarcerated at the Corcoran State Prison in California. On July 27, 1997, a correctional officer discovered Ramirez's cellmate wounded inside their shared cell. Ramirez, the only other occupant, was charged with "battery of an inmate with a weapon with serious bodily injury." The charge stemmed from the report of the responding officer, and two medical reports prepared by the emergency room personnel who treated the cellmate's injuries. On September 27, 1997, the prison held a disciplinary hearing on the charges. During the hearing, Ramirez sought to call his cellmate and the medical staff to testify as to their statements. Both requests were denied. He was found guilty and sentenced to ten days of disciplinary detention and sixty days loss-of-privileges, and was referred to administrative segregation. Subsequently, he was assigned to administrative segregation for a term of twenty-four months. Ramirez filed two unsuccessful administrative appeals challenging the procedures used during the disciplinary process, and the resulting disciplinary sentence.

Ramirez then filed a complaint under 42 U.S.C. § 1983 in the United States District Court for the Eastern District of California alleging that the disciplinary hearing, and subsequent administrative appeals, violated his federal constitutional rights of Due Process and Equal Protection. Ramirez sought damages, declaratory relief, and an injunction requiring, among other things, the vacation of his disciplinary conviction. The matter was referred to a Magistrate Judge.

Pursuant to 28 U.S.C. § 1915A(a), the Magistrate Judge screened the complaint for possible dismissal. The Magistrate Judge reasoned that Ramirez's allegations regarding the procedures utilized at his disciplinary hearing, if proven, would necessarily imply that the outcome of the hearing was invalid. Citing the Supreme Court's decision in *Edwards v. Balisok*, the Magistrate Judge concluded that because Ramirez had not previously invalidated his disciplinary sentence, the constitutional challenges to the disciplinary hearing should be dismissed for failure to state a claim.

Separately, the Magistrate Judge determined that Ramirez's claims regarding the prison appeals process should be dismissed because the actions of prison officials in reviewing an administrative appeal could not serve as a basis for liability under § 1983. Finding no actionable claims, the Magistrate Judge recommended that Ramirez's complaint be dismissed without leave to amend, but without prejudice to refiling if his disciplinary sentence was invalidated through a writ of habeas corpus.

Ramirez filed objections to the report and recommendations of the Magistrate Judge. On May 8, 2000, the District Court adopted the Magistrate Judge's report and recommendations in full, and dismissed the complaint. Ramirez now appeals[1] and we exercise appellate jurisdiction pursuant to 28 U.S.C. § 1291.

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1. Ramirez has not appealed the dismissal of his Equal Protection and respondeat superior claims against the prison administrators, although he does appeal the District Court's dismissal of these claims with prejudice.

II. DISCUSSION

We review de novo the District Court's dismissal of Ramirez's complaint under 28 U.S.C. § 1915A for failure to state a claim. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We review the denial of leave to amend for an abuse of discretion. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). In reviewing the District Court's dismissal, "we consider only the contents of the complaint, taking as true all the allegations of material fact," construed in the light most favorable to the plaintiff. *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir. 1997); *see also Resnick*, 213 F.3d at 447. We note finally that courts must generally construe pro se pleadings liberally. *Resnick*, 213 F.3d at 447.

A. The Disciplinary Hearing

We begin with Ramirez's argument that *Heck v. Humphrey* and *Edwards v. Balisok* do not require the invalidation of his disciplinary sentence to pursue an action under §1983 for the constitutional violations allegedly committed during his disciplinary hearing. To understand the District Court's rationale for dismissing these claims, it is necessary to examine the framework of the federal civil rights and habeas corpus statutes, and the Supreme Court cases explaining the use of § 1983 to challenge prison administrative decisions. Although several opinions of this Court have discussed the concerns underlying the "favorable termination rule," no decision has addressed whether the rule applies to prison disciplinary sanctions that do not affect the fact or length of a prisoner's confinement. *See Nonnette v. Small*, 316 F.3d 872, 878 (9th Cir. 2002); *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir. 1998); *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997); *Butterfield v. Bail*, 120 F.3d 1023 (9th Cir. 1997); *Gotcher v. Wood*, 66 F.3d 1097 (9th Cir. 1995), *on remand*, 122 F.3d 39 (9th Cir. 1997). Thus, we also consider the numerous circuit court decisions on this

issue.

1.

While the Civil Rights Act of 1871 (now codified at 42 U.S.C. § 1983), and the federal habeas corpus statute, 28 U.S.C. § 2254, both provide access to the federal courts "for claims of unconstitutional treatment at the hands of state officials, . . . they differ in their scope and operation." *Heck*, 512 U.S. at 480. Section 1983 provides a remedy for injuries caused by violations of federal law by persons acting under the color of state law.[2] "Congress's purpose in enacting § 1983 was to create a novel civil remedy for violation of established constitutional rights." *Martinez v. City of Oxnard*, 270 F.3d 852, 856 n.2 (9th Cir. 2001). Given this unique legislative intent to provide a federal forum for the vindication of federal rights, courts historically declined to require § 1983 plaintiffs to

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2. 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

exhaust state remedies. *Patsy v. Bd. of Regents*, 457 U.S. 496, 507 (1982); *Sisk v. Branch*, 974 F.2d 116, 117 (9th Cir. 1992). Congress altered this tradition in 1996 with the enactment of the Prison Litigation Reform Act by requiring prisoners to exhaust all available administrative remedies before filing a § 1983 action. 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.").

In contrast, the federal habeas corpus statute explicitly requires state prisoners to first seek relief in a state forum. 28 U.S.C. § 2254(b).[3] This exhaustion requirement "is rooted in consideration of federal-state comity," and allows "the state court system that has convicted a defendant the first opportunity . . . to correct the errors made in the internal administration of their prisons." *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973); *Young v. Kenny*, 907 F.2d 874, 875-76 (9th Cir. 1989). The burden of satisfying the exhaustion requirement of § 2254, and the absence of a similar restriction in § 1983, left the two statutes on a "collision course." *Heck*, 512 U.S. at 492 (Souter, J., concurring in the judgment).

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3. 28 U.S.C. § 2254(b) provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State; or there is an absence of available State corrective process; or circumstances exist that render such process ineffective to protect the rights of the applicant.

2.

The Supreme Court first addressed the intersection between § 1983 and writs of habeas corpus in *Preiser v. Rodriguez*, holding that "when a state prisoner is challenging the very fact or duration of his physical confinement," and where "the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment," the prisoner's "sole federal remedy is a writ of habeas corpus." 411 U.S. at 500. Conversely, *Preiser* concluded that "a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." *Id.* at 499.

The Court revisited *Preiser* in *Heck v. Humphrey*, involving a prisoner's § 1983 action alleging that state prosecutors and investigators had engaged in an unlawful investigation and knowingly destroyed exculpatory evidence. 512 U.S. at 478-79. The prisoner's complaint sought compensatory and punitive damages, but not injunctive relief, or release from custody. *Id.* at 479. The Supreme Court explained that a writ of habeas corpus "is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement . . . even though such a claim may come within the literal terms of § 1983." *Id.* at 481 (discussing *Preiser*, 411 U.S. at 488-90). The Court then announced a new "favorable termination rule" regarding the validity of § 1983 claims by prisoners:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by action whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or

> sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal . . . or called into question by a federal court's issuance of a writ of habeas corpus . . . .

Id. at 486-87. Absent such a showing, "[e]ven a prisoner who has fully exhausted available state remedies has no cause of action under § 1983 . . . ." *Id.* at 489.

In *Edwards v. Balisock*, the Supreme Court extended the favorable termination rule to prison disciplinary actions that implicated the prisoner's term of confinement. In *Edwards*, a prisoner brought suit under § 1983 challenging the procedures used in a disciplinary hearing. Although the prisoner's conviction resulted in the loss of good-time credits, his suit sought only damages, and an injunction against future violations. 520 U.S. at 643-44. The Court held that the prisoner could not circumvent the limitation on § 1983 suits imposed by *Heck*, because the alleged due process defects, if established, "necessarily imply the invalidity of the deprivation of his good-time credits." *Id.* at 646. As that result would decrease the length of the prisoner's confinement, the Court concluded that the prisoner's claims were not cognizable under *§ 1983* until his disciplinary conviction was invalidated.

"When read together, there is a logical and coherent progression of Supreme Court jurisprudence" on the availability of § 1983 in prisoner litigation. *Leamer v. Fauver,* 288 F.3d 532, 542 (3d Cir. 2002). Suits challenging the validity of the prisoner's continued incarceration lie within "the heart of habeas corpus," whereas "a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." *Preiser*, 411 U.S. at 498-99. This distinction applies whether the term of incarceration results from a conviction or sentence imposed by a state court, or a prison disciplinary

sanction. *Edwards*, 520 U.S. at 645; *Heck*, 512 U.S. at 486-87. However, nothing in *Preiser*, *Heck*, or *Edwards* holds that prisoners challenging the conditions of their confinement are automatically barred from bringing suit under § 1983 without first obtaining a writ of habeas corpus. Rather, the applicability of the favorable termination rule turns solely on whether a successful § 1983 action would necessarily render invalid a conviction, sentence, or administrative sanction that affected the length of the prisoner's confinement.

All but one of the circuit courts to consider this issue agree with our conclusion that the favorable termination rule applies only to § 1983 suits that affect the fact or duration of a prisoner's confinement.[4] In *Brown v. Plaut*, 131 F.3d 163 (D.C. Cir. 1997), a prisoner filed a § 1983 action challenging a disciplinary hearing that resulted in a lengthy term of administrative segregation. *Id.* at 165-66. The D.C. Circuit held that the action could proceed because the Supreme Court "has never deviated from *Preiser's* clear line between challenges to the fact or length of custody and challenges to the conditions of

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4. In *Huey v. Stine*, 230 F.3d 226 (6th Cir. 2000), the Sixth Circuit held that the favorable termination rule applies even to suits challenging only the conditions of prison confinement. In *Huey*, a prisoner brought a § 1983 action seeking to challenge a sentence of administrative detention. The Sixth Circuit held that the relief sought by the prisoner would require the court to "unwind the judgment of the state agency," a result the court viewed as impermissible under *Edwards*. *Id.* at 230. The Sixth Circuit's opinion did not elaborate on its disagreement with the other circuit decisions addressing this question, and "failed to consider whether it mattered that the disciplinary measures at issue did not affect the duration of the prisoner's incarceration." *Torres*, 292 F.3d at 149 n.15.

confinement." *Id.* at 168.[5]

The Second Circuit adopted this conclusion in *Jenkins v. Haubert*, 179 F.3d 19 (2d Cir. 1999), holding that the Supreme Court "has never announced that the *Heck* rule bars a prisoner's challenge under § 1983 to an administrative or disciplinary sanction that does not affect the overall length of his confinement." *Id.* at 27. The prisoner in *Jenkins* filed a § 1983 action alleging procedural due process violations during two disciplinary hearings that led to a sentence of administrative segregation. *Id.* at 20-21. Drawing on the Supreme Court's line of decisions, *Jenkins* explained that the plain meaning of "conditions of confinement" encompasses "any deprivation that does not affect the fact or duration of a prisoner's" sentence. *Id.*

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5. The D.C. Circuit also cited the outcome in *Sandin v. Conner*, 515 U.S. 472 (1995), as evidence of the availability of § 1983 actions to challenge the conditions of prison confinement. In *Sandin*, a prisoner was found guilty of a disciplinary infraction, leading to a period of administrative segregation. *Id.* at 475-76. The prisoner challenged the determination through an internal appeal, but also filed suit under § 1983. On the merits, the Supreme Court held that a prisoner may only allege a Due Process claim where the disciplinary restraint imposes "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Id. at 484*. *Sandin* is noteworthy because the Supreme Court addressed the substance of the prisoner's constitutional claim despite the fact that the prisoner had not invalidated the disciplinary sanction at issue. *Plaut*, 131 F.3d at 168. As *Heck* sought to "deny the existence of a cause of action" under § 1983 absent a prior invalidation of the state conviction, the Court's silence in *Sandin* supports our conclusion that the favorable termination rule does not extend to suits challenging only the conditions of confinement. *Heck*, 512 U.S. at 489.

at 28. As the term of administrative segregation did not increase the prisoner's overall time of confinement, his § 1983 suit was not barred by the favorable termination rule. *Id. at 27* ("[W]e hold that a § 1983 suit by a prisoner . . . challenging the validity of a disciplinary or administrative sanction that does not affect the overall length of the prisoner's confinement is not barred by *Heck* and *Edwards*.").

The Seventh Circuit adopted the Second Circuit's decision in *DeWalt v. Carter*, 224 F.3d 607 (7th Cir. 2000), a § 1983 action alleging constitutional violations and retaliation leading to a disciplinary sanction that terminated the prisoner's job. *Id.* at 610-11. *DeWalt* reasoned that "[u]nlike the plaintiffs in *Preiser*, *Heck*, and *Edwards*," the prisoner's suit "does not challenge the fact or duration of confinement, but only a condition of his confinement—the loss of his prison job." *Id.* at 618.

Finally, a pair of decisions from the Third Circuit recognized the distinction between suits challenging the validity of the prisoner's continued incarceration, and suits merely challenging the conditions of prison life. In *Leamer v. Fauver*, an inmate brought a § 1983 suit alleging that prison officials unconstitutionally placed him in restrictive custody and denied him therapy for his sexual offenses. 288 F.3d at 535-537. The Third Circuit explained that although the disciplinary sanctions interfered with his treatment, and thus precluded the possibility of parole, "it did not necessarily affect the length of his incarceration, and thus *Heck* and *Edwards* did not apply." *Torres*, 292 F.3d at 149 (discussing *Leamer*, 224 F.3d at 542-44).

Similarly, in *Torres v. Fauver*, the court considered whether a former prisoner's § 1983 suit alleging due process violations during a disciplinary hearing triggered the favorable termination rule. In *Torres*, the plaintiff was sentenced to a

period of administrative segregation following an unsuccessful escape attempt. *Id.* at 143-44. The plaintiff served his period of disciplinary confinement, and then completed his prison sentence in its entirety. *Id.* at 144. Following his release, the former prisoner filed a § 1983 action. *Id.* Surveying the Supreme Court's decisions, the Third Circuit concluded that a § 1983 suit raising claims concerning only the conditions of prison confinement is not subject to the favorable termination rule. *Torres*, 292 F.3d at 150. Noting that the plaintiff was released from prison prior to filing his suit, the court held that the distinction between suits implicating only the conditions, and not the fact or duration, of confinement applies whether or not the plaintiff remains in custody. *Id.* Therefore, the court concluded that in any § 1983 suit challenging a prison disciplinary decision, the threshold question is whether the sanction affects the fact or length of a prisoner's confinement. *Id.* at 145.

Like these circuits, we hold that the favorable termination rule does not apply to § 1983 suits challenging a disciplinary hearing or administrative sanction that does not affect the overall length of the prisoner's confinement. Where the prison's alleged constitutional error does not increase the prisoner's total period of confinement, a successful § 1983 action would not necessarily result in an earlier release from incarceration, and hence, does not intrude upon the "heart" of habeas jurisdiction. In such cases, the favorable termination rule of *Heck* and *Edwards* does not apply.

3.

Our holding also clarifies our prior decisions addressing the availability of habeas corpus to challenge the conditions of imprisonment. We have held that a prisoner may seek a writ of habeas corpus under 28 U.S.C. § 2241 for "expungement of a disciplinary finding from his record if expungement is likely to

accelerate the prisoner's eligibility for parole." *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989) (citing *McCollum v. Miller*, 695 F.2d 1044, 1047 (7th Cir. 1982)). *Bostic* does not hold that habeas corpus jurisdiction is always available to seek the expungement of a prison disciplinary record. Instead, a writ of habeas corpus is proper only where expungement is "*likely* to accelerate the prisoner's eligibility for parole." *Bostic*, 884 F.2d at 1269 (emphasis added). In *Bostic*, we cited the Seventh Circuit's decision in *McCollum* which presumed that where a disciplinary infraction might delay a prisoner's release on parole, the prisoner may, "by analogy to *Preiser*," challenge the disciplinary sentence through habeas corpus. *McCollum*, 695 F.2d at 1047. *Bostic* thus holds that the likelihood of the effect on the overall length of the prisoner's sentence from a successful § 1983 action determines the availability of habeas corpus. *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997) (finding "no difficulty in concluding that a challenge to the procedures used in the denial of parole *necessarily* implicates the validity of the denial of parole and, therefore, the prisoner's continuing confinement") (emphasis added).

Our decision in *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997), illustrates the importance of measuring the likelihood that a suit under § 1983 will affect the length of the prisoner's confinement. In *Neal*, two state prisoners filed suits under § 1983 alleging that they were classified as sex offenders in violation of the Due Process and Ex Post Facto guarantees. *Id.* at 822-23. Among other harms, both inmates argued that the classification affected their eligibility for parole. *Id.* We held that *Heck* did not require the inmates to invalidate their classification before bringing suit under § 1983, because a favorable judgment "will in no way *guarantee* parole or necessarily shorten their prison sentences by a single day." *Id.* at 824. The prisoner suits did not seek to overturn a disciplinary decision that increased their period of incarceration. Rather, a successful § 1983 action would provide only "a ticket to get in

the door of the parole board." *Id.* A favorable judgment, therefore, would not "undermine the validity of their convictions," or alter the calculus for their possible parole. *Id.*

Neal makes clear that under *Preiser* habeas jurisdiction is proper where a challenge to prison conditions would, if successful, necessarily accelerate the prisoner's release. Thus, *Neal* accords with our holding here that habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence.

4.

With this framework established, we turn to the allegations of Ramirez's complaint. Citing *Bostic*, the State argues that Ramirez's allegation that the prison disciplinary process violated the requirements of Due Process is logically inseparable from an attack on the outcome of that hearing, and that a judgment in his favor would necessarily imply the invalidity of his disciplinary conviction.[6]

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6. Ramirez's complaint seeks to "expunge all references to the disciplinary charge," and prohibit the State "from considering any such reference in any way when they fix plaintiff's terms and decide whether plaintiff should be released on parole." App. at 14. Ramirez asserts in his reply brief that he is not appealing the expungement of his record for the purpose of parole evaluation. This argument attempts to modify the relief sought in his complaint by introducing a factual matter not presented to the District Court. We have consistently held that a party may not raise new issues of fact on appeal after declining to present those facts before the trial court. *Mauro v. Arpaio*, 188 F.3d 1054, 1062 n.6 (9th Cir. 1999); *United States v. Lucas*, 963 F.2d 243, 246 (9th Cir. 1992).

Our inquiry focuses on whether a successful challenge to the procedures used in the hearing "could be such as necessarily to imply the invalidity of the judgment" and a reduction of the length of Ramirez's confinement. *Edwards*, 520 U.S. at 645; *see also Leamer*, 288 F.3d at 543 ("The operative test under *Preiser* and its progeny" is whether a successful § 1983 suit "would necessarily imply that he would serve a shorter sentence . . . ."). Here, if successful, Ramirez will not necessarily shorten the length of his confinement because there has been no showing by the State that the expungement Ramirez seeks is likely to accelerate his eligibility for parole. Like the inmates in *Neal*, if Ramirez is successful in attacking the disciplinary hearing and expunging his sentence, "[t]he parole board will still have the authority to deny [his] request[ ] for parole on the basis of any of the grounds presently available to it in evaluating such a request." *Neal*, 131 F.3d at 824. As Ramirez's suit does not threaten to advance his parole date, his challenge to his disciplinary hearing is properly brought under § 1983.[7]

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7. For this reason, we need not consider the broader question–opened in *Spencer v. Kemna*, 523 U.S. 1 (1998)–of whether the favorable termination rule applies to former or current prisoners who cannot seek relief under the federal habeas corpus statute. In *Spencer*, a state prisoner filed a petition for a writ of habeas corpus seeking to invalidate the revocation of his release on parole. While the petition was pending, his sentence expired, and he was released, leading the district court to dismiss the petition as moot. *Id.* at 5-6. The Supreme Court agreed, holding that the prisoner's petition did not present a case or controversy within the meaning of Article III. *Id.* at 14-16.

The Justices also expressed their views on the boundaries of the favorable termination rule. The majority opinion briefly noted the prisoner's argument that the holding of

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Heck precluded his habeas petition from becoming moot upon release from prison. The prisoner argued that because *Heck* requires him to invalidate his conviction through a writ of habeas corpus, he must be permitted to pursue his petition as a prerequisite to bringing a suit for damages. In response, the majority observed that a § 1983 suit might still be possible, provided the prisoner's allegations did not necessarily imply the invalidity of his conviction. *Id.* at 17. In addition, the majority dismissed the prisoner's *Heck* dilemma in dictum as a "great non sequitur, unless one believes (as we do not) that a § 1983 action for damages must always and everywhere be available." *Id.*

In concurrence, Justices Souter, O'Connor, Ginsburg, and Breyer saw nothing to preclude a suit under § 1983. Writing for these concurring Justices, Justice Souter reiterated his earlier position in *Heck* that "a former prisoner, no longer 'in custody,' may bring a § 1983 action . . . without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Id.* at 21 (Souter, J., concurring). Justice Ginsburg concurred separately with this view, writing that "individuals without recourse to the habeas statute because they are not 'in custody' . . . fit within § 1983's 'broad reach'." *Id.* at 21 (Ginsburg, J., concurring) (quoting *Heck*, 512 U.S. at 503 (Souter, J., concurring in the judgment)). In dissent, Justice Stevens viewed as "perfectly clear" a prisoner's right to bring suit under § 1983 where a remedy through habeas is unavailable. *Id.* at 25 n.8 (Stevens, J., dissenting). The concurring and dissenting opinions thus "revealed that five Justices hold the view that, where federal habeas corpus is not available to address constitutional wrongs, § 1983 must be." *Jenkins*, 179 F.3d at 26.

B. The Term of Administrative Segregation

Having determined that this action may proceed under § 1983, we turn to Ramirez's argument that the District Court also erred in dismissing his Due Process challenge to his disciplinary sentence. Liberally interpreted, Ramirez's pro se complaint and objections to the Magistrate Judge's report and recommendation alleged that the disciplinary and appeals boards denied his request to examine adverse witnesses in violation of his Due Process rights. Ramirez's objections also alleged that prison officials "added things" to his appeal to mask the procedural errors committed at the disciplinary hearing. The District Court held that because inmates have no constitutional right to a prison grievance system, the actions of the prison officials in reviewing his internal appeal cannot create liability under § 1983.

The Due Process clause provides prisoners two separate sources of protection against unconstitutional state disciplinary actions. First, a prisoner may challenge a disciplinary action which deprives or restrains a state-created liberty interest in some "unexpected manner." *Sandin v. Conner*, 515 U.S. 472, 483-84 (1995). Ramirez's claimed loss of a liberty interest in the processing of his appeals does not satisfy this standard, because inmates lack a separate constitutional entitlement to a specific prison grievance procedure. *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988). Accordingly, Ramirez's claim lacks the necessary constitutional foundation, and thus does not extend his confinement in an unexpected manner.

Second, a prisoner may challenge a state action which does not restrain a protected liberty interest, but which nonetheless imposes some "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484; *Keenan v. Hall*, 83 F.3d 1083, 1088 (9th Cir. 1996). If the hardship is sufficiently significant, then the court

must determine whether the procedures used to deprive that liberty satisfied Due Process. *Sandin*, 515 U.S. at 484; *Keenan*, 83 F.3d at 1089.

There is no single standard for determining whether a prison hardship is atypical and significant, and the "condition or combination of conditions or factors . . . requires case by case, fact by fact consideration." *Keenan*, 83 F.3d at 1089. Three guideposts cited in *Sandin's* analysis, however, provide a helpful framework: 1) whether the challenged condition "mirrored those conditions imposed upon inmates in administrative segregation and protective custody," and thus comported with the prison's discretionary authority; 2) the duration of the condition, and the degree of restraint imposed; and 3) whether the state's action will invariably affect the duration of the prisoner's sentence. *Sandin*, 515 U.S. at 486-87; *Keenan*, 83 F.3d at 1089.

In the present case, the District Court did not consider whether Ramirez's disciplinary segregation imposed an atypical and significant hardship warranting additional Due Process protections during his hearing. Although we cannot determine from the present record whether his administrative segregation imposed such a burden, we note that Ramirez's objections included allegations that his segregated unit was overcrowded and violent, and that the isolation severed ties to his family. Ramirez also alleged that during his segregation, "he was made a patient of [ ] psychiatric programs. " Most significantly, Ramirez was segregated for a period of two years, and "the length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards." *Keenan*, 83 F.3d at 1089 (quoting *Hutto v. Finney*, 437 U.S. 678, 686 (1978)). We therefore remand the issue of Ramirez's segregation for application of the *Sandin* factors, and a determination, if necessary, of whether Ramirez was provided the process due. *Id.*

C. Dismissal With Prejudice

Finally, Ramirez argues that the District Court abused its discretion in dismissing his complaint with prejudice. Leave to amend should be granted unless the pleading "could not possibly be cured by the allegation of other facts," and should be granted more liberally to pro se plaintiffs. *Lopez*, 203 F.3d at 1130, 1131 (citation omitted). The District Court did not find that Ramirez's claims under the Equal Protection clause or his claims of supervisory liability could not be cured by the allegation of additional facts. Instead, the District Court determined that Ramirez's entire complaint could not proceed until he invalidated his disciplinary sentence. As explained, that conclusion rests on an erroneous application of the favorable termination rule. Accordingly, we reverse the dismissal of these claims and remand with the instruction that Ramirez be permitted an opportunity to amend his complaint.

CONCLUSION

We reverse the order of the District Court dismissing Ramirez's complaint which challenged his disciplinary sentence, and remand with leave to amend the complaint and for any additional proceedings consistent with our holding.

REVERSED AND REMANDED WITH INSTRUCTIONS

FILED
Dec 14 8 38 AM '99
CLERK US DIST COURT
EASTERN DIST. OF CALIF
AT FRESNO
BY s/_____
Deputy

Entry date: 12/14/99

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS RAMIREZ, Plaintiff, vs. **GEORGE M. GALAZA, et al.,** Defendants.	CASE NO. CV-F-99-6282 REC DLB P **FINDINGS AND RECOMMENDATIONS RE DISMISSAL OF ACTION FOR FAILURE TO STATE A CLAIM** [Doc. 1]

Plaintiff Luis Ramirez ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint in this action on August 31, 1999.

The court is required to screen complaints brought by

prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that. are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1916A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

I. Discussion

A. Plaintiff's Allegations

In his complaint, plaintiff alleges that, on July 27, 1997, he was ". . . deemed . . ." to have battered his cellmate. (Complaint, p. 3). Plaintiff alleges that he received a copy of the rules violation containing the charge on September 12, 1997.

Plaintiff alleges that he was subsequently found guilty of the charge, and, among other things, assessed a twenty-four month term in the Security Housing Unit. Plaintiff alleges that he did not receive a fair hearing.

Plaintiff alleges that, on October 6, 1997, he filed an inmate grievance regarding his hearing, and that he pursued his grievance up to the Director's Level. Plaintiff alleges that his appeal was denied at all levels. Plaintiff alleges that the appeals process was unfair and that the prison officials who denied his appeals included false information in their written denials.

Plaintiff names George M. Galaza, James Gomez, R. McEnroe, O. Pena, Adrian Chacon, Garth Embree, J. Batchelor, and Linda Melching as defendants. Plaintiff seeks both monetary and injunctive relief.

B. Disciplinary Hearing

Plaintiff alleges that his Fourteenth Amendment right to due process of law was violated because he did not receive a fair hearing. Plaintiff alleges that defendant McEnroe was the senior hearing officer at his disciplinary hearing. Further, plaintiff alleges that defendants Chacon and Embree violated his right to equal protection and due process of law by placing false information in their medical reports. Plaintiff alleges that the information contained in the medical reports was entered as evidence against him at his disciplinary hearing.

Pursuant to the rule announced in Edwards v. Balisok, 520 U.S. 641 (1997), a claim challenging the procedural aspects of a prison disciplinary hearing is not cognizable under section 1983 if the nature of the inmate's allegations are such that, if proven, would necessarily imply the invalidity of the result of the prison disciplinary hearing, unless the prisoner can demonstrate that the result of the disciplinary hearing has been

previously invalidated. Id. at 648; see Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997) (applying Balisok to dismiss action in which a prisoner sought monetary relief based on allegations that prison officials relied on false information to find him ineligible for parole); Gotcher v. Wood, 122 F.3d 39 (1997), on remand from 520 U.S. 1238 (1997) (holding that prisoner's claim for compensatory damages was not cognizable under section 1983).

In this instance, plaintiff has not demonstrated that the result of his disciplinary hearing has been previously invalidated. Plaintiff's allegations regarding his disciplinary hearing are such that, if proven, would necessarily imply the invalidity of the result of the prison disciplinary hearing. Therefore, plaintiff's claim is barred by Balisok and must be dismissed.

C. Inmate Appeals Process

Plaintiff alleges that defendants Batchelor, Melching, and Pena violated plaintiff's equal protection and due process rights when they denied plaintiffs appeal regarding his unfair disciplinary hearing. Prisoners have no constitutional right to an inmate grievance system. Olim v. Wakinekona, 461 U.S. 238, 249 (1983). Thus, the non-existence of, or the failure of prison officials to properly implement an administrative appeals process within the prison system does not raise constitutional concerns. Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993); Flick v. Alba, 932 F.2d 728 (8th Cir. 1991). "[A prison] grievance procedure is a procedural right only, it does not confer any substantive right upon the inmates." Buckley, 997 F.2d at 495 (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982); see also Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). "Hence, it does not give rise to a protected liberty interest requiring the procedural protections envisioned by the Fourteenth Amendment." Azeez v. DeRobertis, 568 F.

Supp. at 10; Spencer v. Moore, 638 F. Supp. 315, 316 (E.D. Mo. 1986). Specifically, failure to process a grievance does not state a constitutional violation. Buckley, 997 F.2d at 495. Thus, a prison official's involvement and actions in reviewing prisoner's administrative appeal cannot serve as the basis for liability under a § 1983 action. Buckley, 997 F.2d at 495. The denial of plaintiff's grievance by defendants Batchelor, Melching, and Pena does not give rise to a cognizable claim for relief under section 1983.

D. Equal Protection

Plaintiff alleges that a number of defendants violated his right to equal protection of the law. Equal protection claims arise when a charge is made that similarly situated individuals are treated differently without a rational relationship to a legitimate state purpose. See San Antonio School District v. Rodriguez, 41 1 U.S. 1 (1972). In order to state a § 1983 claim based on a violation of the equal protection clause of the Fourteenth Amendment, a plaintiff must allege that defendants acted with intentional discrimination against a class of inmates which included plaintiff. Lowe v. City of Monrovia, 775 F.2d 998, 1010 (9th Cir. 1985); Federal Deposit Ins. Corp. v. Henderson, 940 F.2d 465,471 (9th Cir. 1991). In this instance, plaintiff's allegations involve his disciplinary hearing, the evidence used against him, and his subsequent appeal regarding the hearing. Plaintiff does not allege that defendants acted to intentionally discriminate against a class of inmates which included plaintiff. Therefore, plaintiff fails to state a cognizable equal protection claim against any defendant.

E. Supervisory Liability

Plaintiff names George M. Galaza, the warden at Corcoran State Prison, and James Gomez, the former Director of the California Department of Corrections, as defendants.

These defendants appear to be named solely because of they held supervisory positions at the time the events contained in plaintiff's complaint occurred. Supervisory personnel are generally not liable under section 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisorial position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To show a prima facie case of supervisory liability, plaintiff must allege facts indicating that supervisory defendants either: personally participated in the alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some facts must be alleged to support claims under Section 1983. See Leatherman v. Tarrant County Narcotics Unit, 507 U.S. 163, 168 (1993). The court finds that plaintiff has alleged no facts linking defendants Galaza and Gomez to any constitutional violation, and recommends that plaintiff's claim against defendants Galaza and Gomez be dismissed.

Based on the foregoing, the court finds that plaintiff has failed to state any cognizable claims for relief pursuant to section 1983, and the court recommends that this action be dismissed in its entirety. The court finds that the deficiency in the complaint is not capable of being cured by amendment, and therefore leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii): Noll v. Carlson, 809 F. 2d 1446, 1448-49 (9th Cir. 1987). Finally, the court recommends that the dismissal without leave to amend be without prejudice to re-filing should

plaintiff later be able to demonstrate that he invalidated the result of his disciplinary hearing via a petition for writ of habeas corpus.

Accordingly, it is HEREBY RECOMMENDED that:

1. This action be dismissed, without leave to amend, for failure to state a claim upon which relief may be granted; and

2. That the dismissal without leave to amend be without prejudice to re-filing should plaintiff later be able to demonstrate that he invalidated the result of his disciplinary hearing via a petition for writ of habeas corpus.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty (20) days after being served with these Findings and Recommendations, the parties may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: 12/13/99

s/
DENNIS L. BECK
UNITED STATES MAGISTRATE JUDGE

FILED
May 8 12 43 PM '00
CLERK US DIST COURT
EASTERN DIST. OF CALIF
AT FRESNO
BY s/_____
Deputy

Entry date: 5/9/00

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS RAMIREZ,

Plaintiff,

vs.

GEORGE M. GALAZA, et al.,

Defendants.

CASE NO. CV-F-99-6282 REC DLB P

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

[Doc. 15]

Plaintiff Luis Ramirez ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(b) and Local Rule 73-302.

On December 14, 1999, the Magistrate Judge filed Findings and Recommendations herein which was served on plaintiff and which contained notice to plaintiff that any objections to the Findings and Recommendations were to be filed within twenty days.[1] Plaintiff filed objections to the Findings and Recommendations on January 31, 2000.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed December 14, 1999, are adopted in full;

2. This action is dismissed, without leave to amend, for failure to state a claim upon which relief may be granted; and

3. The dismissal is without prejudice to re-filing should plaintiff later be able to demonstrate that he invalidated the result of his disciplinary hearing.

DATED: 5/5/00 s/_____
ROBERT E. COYLE
UNITED STATES DISTRICT JUDGE

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1. A courtesy copy was served on the Office of the Attorney General. However, no defendant has been served or made an appearance in this action.

FILED
JUDGMENT ENTERED
5-9-00
BY s/_____
Deputy Clerk
U.S. District Court
Eastern District of California
__✓__ FILE CLOSED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS RAMIREZ,

Plaintiff,

v.

GEORGE M. GALAZA, et al.,

Defendants. /

JUDGMENT IN A CIVIL ACTION

CV-F-99-6282
REC/DLB P

DECISION BY COURT: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that JUDGMENT IS ENTERED for Defendant and against Plaintiff. This action is DISMISSED, without prejudice to re-filing should plaintiff later be able to demonstrate that he invalidated

the result of his disciplinary hearing.

DATED: 5/9/00

JACK L. WAGNER,
Clerk
By: s/_____
Deputy Clerk

FILED
SEP 08 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Entry date: 9/8/03

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LUIS RAMIREZ,

Plaintiff-Appellant,

v.

GEORGE M. GALAZA, Warden; JAMES GOMEZ, Director of CDC; R. MCENROE, Lieutenant; O. PENA, Chief Deputy Warden; ADRIAN CHACON, Medical Assistant; GARTH EMBREE, Physician; J. BATCHELOR, Examiner; LINDA L. MELCHING, Chief Inmate Appeals Branch,

Defendants-Appellees.

No. 00-15994

D.C. No. CV-99-06282-REC/DLB
Eastern District of California, Fresno

ORDER

Before: COWEN,* HAWKINS and W. FLETCHER, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judge Cowen has recommended denying the petition for rehearing en banc. Judges Hawkins and W. Fletcher have voted to deny the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no Judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are DENIED.

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*. Honorable Robert E. Cowen, Senior United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.